

REMARKS

I. Amendment

At page 3 of the Office Action dated October 17, 2003, the Examiner states that the amendment filed February [16], 2001, needs to be resubmitted to comply with the new guidelines. The amendment to the specification is resubmitted by presenting the entire text of the rewritten paragraph on a separate page, and identifying the amended text with bracket and underline markings pursuant to 37 C.F.R. § 1.173(d)(1) and (2).

The amendment to the claims is also resubmitted by presenting the entire text of the amended claims on a separate page, and identifying the amended text with bracket and underline markings pursuant to 37 C.F.R. § 1.173(d)(1) and (2). Applicants further include the following statement of the status of claims and support for claim changes pursuant to 37 C.F.R. § 1.173(c):

Upon entry of the above Amendment, claims 4, 7, 10, 13 and 16 are pending. Claims 1-3, 5, 6, 8, 9, 11, 12, 14, 15 and 17-20 were cancelled by the amendment filed September 27, 2002. The amendments to claims 4, 7, 10, 13 and 16 are supported throughout the examples, which describe DNA molecules that are isolated (i.e., not a product of nature) and that comprise SEQ ID NOS. 4, 6, 7, 8 and 17. See, e.g., col. 14, l. 44 – col. 17, l. 11 and col. 39, ll. 44-50. The amendments to claims 4, 7, 10, 13 and 16 were made pursuant to the suggestion of the Examiner in the Office Action dated January 16, 2001, paragraph 4. Therefore, no new matter is added by the above amendments.

II. Drawings

The drawings are objected to because, as stated by the Draftsperson, "Applicant must remove the patent information from the top of each sheet." Accordingly, amended drawings are concurrently submitted in a separate paper with a transmittal letter addressed to the Official Draftsperson, as required by the attachment to Form PTO-948 dated March 21, 2002. Therefore, the objection to the drawings should be withdrawn.

III. Information Disclosure Statement

The Examiner states for the first time in the Office Action of October 17, 2003, that the Information Disclosure Statements filed on January 11, 2001 and February 20, 2001, fail to comply with the requirements for a reissue application because they do not provide a list of all publications listed on the original patent. In a telephone conference with Examiner Rao on March 17, 2004, the Examiner agreed to cite the two references noted on U.S. Patent No. 5,776,760 on an Examiner's Form PTO-892 Notice of References in order to place these references in the record of the reissue application. Therefore, this objection should be withdrawn.

IV. Sequence Listing

On page 3 of the Office Action of October 17, 2003, the Examiner states that this application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. § 1.821(c). The Examiner further states that a copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. § 1.821(e).

Applicants respectfully note that the disclosure of U.S. Patent No. 5,776,760, the original patent upon which this reissue application is based, contains a sequence listing as a separate part of the disclosure at columns 43 – 72.

Pursuant to 37 C.F.R. § 1.821(e), in lieu of filing a duplicate computer readable Sequence Listing, applicants request the use of the computer readable Sequence Listing filed in U.S. Patent Application Serial No. 08/484,274 (the application that led to the issuance of U.S. Patent No. 5,776,760). That Sequence Listing was compliant with all requirements of 37 C.F.R. § 1.821. The Sequence Listing for this reissue application is identical to the paper and computer readable versions of the Sequence Listing filed on February 18, 1997, for U.S. Patent Application Serial No. 08/484,274.

Therefore, all required sequence listing information for this reissue application has been provided and this objection should be withdrawn.

V. Supplemental Reissue Declaration

The Examiner cites 37 C.F.R. § 1.175(b)(1) and asserts that a supplemental reissue oath/declaration under 37 C.F.R. § 1.175(b)(1) must be received before this reissue application can be allowed. Claims 4, 7, 10, 13 and 16 are also rejected as being based upon a defective declaration under 35 U.S.C. § 251 for the same reason. As suggested by the Examiner, Applicants submit the enclosed Supplemental Reissue Declaration, which states that "every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."


Therefore, the objection and rejection based on a defective reissue declaration should be withdrawn.

* * *

The Examiner is invited to contact the undersigned attorney with any questions or comments relating to this patent application.

Should any other fee be required for any reason in connection with this communication, the Commissioner is authorized to deduct said fees from Howrey Simon Arnold & White Deposit Account No. 01-2508/11914.0140.NPUS00/WAA.

Respectfully submitted,


Janette D. Waack
Reg. No. 36,300

Attorney for the Assignee
MONSANTO TECHNOLOGY LLC.

HOWREY SIMON ARNOLD & WHITE
750 Bering Drive
Houston, TX 77057-2198
(713) 787-1400

Date: March 17, 2004